

GALAXIE STEEL WORKERS UNION (GSWU-NAFLU-KMU), EDUARDO FLORES, BONIFACIO LABACO, SALVADOR VERDEFLOR, PAULITO NIEVES, NILO AMENAZOR, BENJAMIN BEDUYA, EUTIQUIO MENESES, CENON LABAC...

G.R. NO. 165757. October 17, 2006

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

Assailed via petition for review are issuances of the Court of Appeals in CA-G.R. SP No. 68669, to wit: Decision[1] dated March 26, 2004 denying petitioners' petition for certiorari and upholding the decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 026956-00, and Resolution dated October 19, 2004 denying petitioners' motion for reconsideration of the decision.

Respondent Galaxie Steel Corporation (Galaxie) is a corporation engaged in the business of manufacturing and sale of re-bars and steel billets which are used primarily in the construction of high-rise buildings. On account of serious business losses which occurred in 1997 up to mid-1999 totaling around P127,000,000.00,[2] Galaxie decided to close down its business operations.

Galaxie thus filed on July 30, 1999 a written notice with the Department of Labor and Employment (DOLE) informing the latter of its intended closure and the consequent termination of its employees effective August 31, 1999.[3] And it posted the notice of closure on the corporate bulletin board.[4]

On September 8, 1999, petitioners Galaxie Steel Workers Union and Galaxie employees filed a complaint for illegal dismissal, unfair labor practice, and money claims against Galaxie.

The Labor Arbiter, by Decision of October 30, 2000, declared valid Galaxie's closure of business but nevertheless ordered it to pay petitioner-employees separation pay, pro-rata 13[th] month pay, and vacation and sick leave credits. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered ordering Respondents to pay complainants separation pay, pro-rata 13[th] month pay, and vacation leave and sick leave credits in the following computed amounts:

x x x x

Respondents are further ordered to pay complainants their tax refund for 1999 and to pay 10% attorney's fees based on the total withheld labor standard benefits.

The complaint for unfair labor practice, illegal lockout, wage differentials, and other money claims are hereby disallowed for lack of merit.

SO ORDERED.[5]

On appeal, the NLRC upheld the Labor Arbiter's decision but reversed the award of pro-rata 13[th] month pay and vacation and sick leave credits, the same not being among petitioners' causes of action as in fact they were not

even mentioned in their pleadings.[6] And it reversed too the award for separation pay, the closure of Galaxie's business being due to serious business losses. Nevertheless, the NLRC directed Galaxie to grant petitioners, by way of financial assistance, the same amount given to the employees who had executed quitclaims. Thus the dispositive portion of the NLRC decision read:

WHEREFORE, the decision appealed from is hereby SET ASIDE. The complaint for unfair labor practice and illegal dismissal is DISMISSED for lack of merit. The respondent Galaxie Steel Corporation is hereby ordered to extend as any by way of financial assistance the equivalent of ten (10) day's (sic) salary for every year of service to each of the following: Eduardo Flores, Bonifacio Labaco, Salvador Verdeeflor, Paulito Nieves, Nilo Amenazor, Benjamin Beduya, Eutiquio Meneses, Cenon Labaco, Danilo Maranan, Eliseo Lastimoso, James Maderas, Efren Labaco, Cesario Bolsico, Dario Cecalain, Sammy Ceden, Prudencio dela Cruz, Edgardo Pastrana, Danilo Bermudez, Billy Blasco, Roberto Pepino, Ruben Tenoso, Orlando Dudilla, Jessie Sace, June Dalayat, Francisco Labaco, Edwin Demayo, Wilfredo Cheng, Jaime Gando, Joselito Guanzon, Victor Delmundo, Nathaniel Peroy, Roberto Virtudazo, Ricardo Hilaga, Rodrigo Firnanez, Rene Villa, Vergelio Ico, Nolito Panuncio, Aldronico Bahillo, Florencio Lanzaderos, Rolly Rotil, Benjamin Escano, Dominador Abaincia, Romeo Litang, Nelson Petalio, Mario Villamor, Agustin Constantino, Herminio Agustin, Victorio Nemenzo, Mabini Yarcia, Percy Zosimo, Angelito delos Reyes, Advinula Elmedulan, Gorgonio Boloran, Alan Monin, Jessie Pacalingga and Michael Daclag.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[7]

Their motion for reconsideration having been denied, petitioners filed a petition for certiorari with the Court of Appeals, arguing that the NLRC acted with grave abuse of discretion in not finding Galaxie guilty of unfair labor practice and of violating petitioners' right to notice of closure, and in deleting the award of separation pay.

In the assailed decision,[8] the Court of Appeals upheld the NLRC decision and accordingly denied petitioners' petition for certiorari as it did their motion for reconsideration.

Hence, the present petition for review which raises the following issues:

- Whether or not [Galaxie] is guilty of unfair labor practice in closing its business operations shortly after petitioner union filed for certification election.
- Whether or not petitioners are entitled to separation pay.
- Whether or not the written notice posted by [Galaxie] on the company bulletin board sufficiently complies with the notice requirement under Article 283 of the Labor Code.

Petitioners contend that the Court of Appeals erred in not finding that Galaxie's closure of business operations was motivated not by serious business losses but by their anti-union stance.

It is settled that this Court is not a trier of facts, a rule which applies with greater force in labor cases where the findings of fact of the NLRC are accorded respect and even finality, as long as they are supported by substantial evidence from which an independent evaluation of the facts may be made.[9] In this case, the Labor Arbiter, the NLRC, and the Court of Appeals were unanimous in ruling that Galaxie's closure or cessation of business operations was due to serious business losses or financial reverses, and not because of any alleged anti-union position. This Court finds no reason to modify such finding.

In any event, petitioners contend that Galaxie did not serve written notices of the closure of business operations upon its employees, it having merely posted a notice on the company bulletin board. Hence, petitioners conclude, following the doctrine in *Serrano v. National Labor Relations Commission*, [10] Galaxie should be liable for

backwages from the date of dismissal until finality of the decision in the case.

Further, petitioners contend that the appellate court's upholding of the deletion by the NLRC of separation pay is contrary to the ruling in *Banco Filipino Savings and Mortgage Bank v. National Labor Relations Commission*[11] which held that separation pay is proper in cases where closure or cessation of business operations is due to serious business losses or financial reverses.

Indeed, Galaxie's documentary evidence shows that it had been experiencing serious financial losses at the time it closed business operations. As aptly found by the Court of Appeals:

The NLRC's finding on the legality of the closure should be upheld for it is supported by substantial evidence consisting of the audited financial statements showing that Galaxie continuously incurred losses from 1997 up to mid-1999, to wit: P65,753,480.65 in 1997, P48,429,785.89 in 1998, and P13,204,389.97 in 1999; and of the various demand notices of payments from creditor banks. Besides, the petitioners had not presented evidence to the contrary; nor did they establish that the closure was motivated by Galaxie's anti-union stance. True, the union was seeking the holding of a certification election at the time that Galaxie closed its business operation, but that, without more, was not sufficient to attribute anti-unionism against Galaxie. (Underscoring supplied)

Upon the other hand, petitioners failed to present concrete evidence supporting their claim of unfair labor practice. Unfair labor practice refers to acts that violate the workers' right to organize,[12] and are defined in Articles 248 and 261 of the Labor Code. The prohibited acts relate to the workers' right to self-organization and to the observance of Collective Bargaining Agreement without which relation the acts, no matter how unfair, are not deemed unfair labor practices.[13]

Respecting petitioners' claim for separation pay, Article 283 of the Labor Code provides:

Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or under taking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

In *North Davao Mining Corporation v. National Labor Relations Commission*,[14] this Court held that Article 283 governs the grant of separation benefits "in case of closures or cessation of operation" of business establishments "NOT due to serious business losses or financial reverses . . ." Where, the closure then is due to serious business losses, the Labor Code does not impose any obligation upon the employer to pay separation benefits.[15]

Explaining the policy distinction in Article 283 of the Labor Code, this Court, in *Cama v. Joni's Food Services, Inc.*, declared:[16]

The Constitution, while affording full protection to labor, nonetheless, recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." In line with this protection afforded to business by the fundamental law, Article 283 of the Labor Code clearly makes a policy distinction. It is only in instances of "retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses" that employees whose

employment has been terminated as a result are entitled to separation pay. In other words, Article 283 of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to serious losses. To require an employer to be generous when it is no longer in a position to do so, in our view, would be unduly oppressive, unjust, and unfair to the employer. Ours is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor the self-destruction of the employer. x x x (Emphasis supplied)

The denial of petitioners' claim for separation pay was thus in order.

Finally, with regard to the notice requirement, the Labor Arbiter found, and it was upheld by the NLRC and the Court of Appeals, that the written notice of closure or cessation of Galaxie's business operations was posted on the company bulletin board one month prior to its effectivity. The mere posting on the company bulletin board does not, however, meet the requirement under Article 283 of "serving a written notice on the workers." The purpose of the written notice is to inform the employees of the specific date of termination or closure of business operations, and must be served upon them at least one month before the date of effectivity to give them sufficient time to make the necessary arrangements.[17] In order to meet the foregoing purpose, service of the written notice must be made individually upon each and every employee of the company.

Nevertheless, the validity of termination of services can exist independently of the procedural infirmity in the dismissal. In *Agabon v. National Labor Relations Commission*,[18] the Court deemed it best to revisit the doctrine in *Serrano*,[19] which was cited by petitioners, in relation to *Wenphil Corp. v. National Labor Relations Commission*. [20] After analyzing the consequences of the divergent doctrines on employment termination, the Court held that in cases involving dismissals for cause, but without observance of statutory due process, the better rule is to abandon the *Serrano* doctrine and to follow *Wenphil* by declaring that the dismissal was for cause but imposing sanctions on the employer. By so doing, dispensing justice not just to employees but to employers as well is achieved.[21]

In *Business Services of the Future Today, Inc. v. Court of Appeals*,[22] which reiterated the ruling in *Agabon v. National Labor Relations Commission*,[23] this Court held that where the dismissal is for an authorized cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee, in the form of nominal damages, for the violation of his right to statutory due process.

Ultimately, however, the amount of damages to be awarded the employee is addressed to the sound discretion of the Court, taking into account the relevant circumstances.[24]

Under the facts and circumstances attendant to the case, this Court finds the amount of P20,000 in nominal damages sufficient to vindicate each petitioner's right to due process.

WHEREFORE, the assailed Decision dated March 26, 2004 and Resolution dated October 19, 2004 issued by the Court of Appeals in CA-G.R. SP No. 68669 are AFFIRMED with the MODIFICATION that respondent Galaxie Steel Corporation is ORDERED to PAY each of the individual petitioners the amount of P20,000.00 as nominal damages for non-compliance with statutory due process.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Godardo A. Jacinto

and Elvi John S. Asuncion; CA rollo, pp. 139-151.

[2] NLRC records, pp. 43-53.

[3] Id. at 64 & 109.

[4] Id. at 109.

[5] Id. at 164-167.

[6] Id. at 264.

[7] Id. at 265-266.

[8] CA rollo, pp. 139-151.

[9] Amadeo Fishing Corporation v. Nierra, G.R. No. 163099, October 4, 2005, 472 SCRA 13.

[10] 380 Phil. 416 (2000).

[11] G.R. No. 82135, August 20, 1990, 188 SCRA 700.

[12] Philcom Employees Union v. Philippine Global Communications, G.R. No. 144315, July 17, 2006.

[13] Ibid. citing Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation, G.R. No. 126717, 11 February 1999, 303 SCRA 113; CESARIO A. AZUCENA, JR., II THE LABOR CODE WITH COMMENTS AND CASES 210 (5th ED. 2004) [THE LABOR CODE WITH COMMENTS AND CASES].

[14] 325 Phil. 202 (1996).

[15] North Davao Mining Corporation v. National Labor Relations Commission, *supra*; Reahs Corp v. National Labor Relations Commission, 337 Phil 698 (1997); Cama v. Joni's Food Services, Inc., G.R. No. 153021, March 10, 2004, 425 SCRA 259; Alabang Country Club, Inc. v. National Labor Relations Commission, G.R. No. 157611, August 9, 2005, 466 SCRA 329.

[16] *Supra*.

[17] DAP Corporation v. Court of Appeals, G.R. No. 165811, December 14, 2005, 477 SCRA 792.

[18] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[19] *Supra*.

[20] G.R. No. 80587, February 8, 1989, 170 SCRA 69.

[21] Agabon v. National Labor Relations Commission, *supra*.

[22] G.R. No. 157133, January 30, 2006, 480 SCRA 571.

[23] *Supra*.

[24] Agabon v. National Labor Relations Commission, *supra*; TPI Philippines Cement Corporation v. Cajucom VII, G.R. No. 149138, February 28, 2006, 483 SCRA 494.

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